

dispose of references under the Act, which are made over to him for disposal by District Judge. Similarly, a District Judge acting on a reference by the Collector is acting as a Court and not as a person designate. Court constituted under the Act is subordinate to High Court and revision to High Court is competent, as held in AIR 1934 All 269 (263) (B).

As provided for by the Hon'ble Supreme Court in *Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona and another*, etc, (AIR 1988 SC 1652), the award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the reference. It is not the function of the Court to sit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court. The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

CONCLUSIONS AND SUGGESTIONS

Keeping in view and based on the foregoing discussion, it can be safely said that the law relating to the Court to which the Collector under the Land Acquisition Act can make a reference, is not as clear as it ought to be. However, by a conjunctive reading of the term "Court" as envisaged in Section 3(17) of the General Clauses Act, 1897, Section 2(4) of the Code of Civil Procedure and Section 3(d) of the Land Acquisition Act, it can be construed that the Court to which a reference can be made under the Land Acquisition Act is the District Court, provided that there is no Special Judicial Officer appointed by the appropriate Government for that purpose for any local limits specifically. But a reading of the A.P. Civil Courts Act, 1972 again drags a reader into uncalled for

confusion in deciding the Court to which a reference can be made.

In the presence of uncertainty in interpretation of law in force relating to making a reference to the Court by the Collector under the L.A Act as discussed above, it would be appropriate and timely, to modify the law, making the District Court as such, as the Court for making a reference under the L.A. Act by means of an amendment, more so, in the following manner:

1. Clause (d) of Section 3 of the Land Acquisition Act, 1894, shall be modified as in the following form:
 "(d) the expression 'Court' means a 'District Court', unless the appropriate Government has appointed a Special Judicial Officer specifying local limits to perform the functions of the Court under this Act".
2. Pertinent Sections of the A.P. Civil Courts Act, 1972 shall be modified to give effect to the modification suggested supra.

POSSESSION OF ACQUIRED LAND UNDER LAND ACQUISITION ACT: A CRITICAL STUDY IN THE LIGHT OF SUPREME COURT'S DECISION IN BANDA DEVELOPMENT AUTHORITY'S CASE*

By

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1. In most of the land acquisition cases, possession of acquired land by the authorities concerned has become a subject of prolonged litigation, as a result of cases

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led by the owners of the land. The most question that arises for consideration is as to what constitutes taking over of the acquired land and incidentally the problem of legal status of writ petitions filed by the owners questioning the taking over or otherwise under the Land Acquisition Act, 1894¹. The Supreme Court had the opportunity to decide such a critical issue in *Banda's*.²

2. The first issue that came up for consideration in *Banda's* case,³ is the time limit within which the writ petition have been filed and applicability of the period of limitation. Though the limitation period with regard to writ petition is a subject matter of self-imposed norms by the concerned courts, the general norms laid down by the court may be stated thus:-

- (i) Writ petitions filed after 9 years of publication of the declaration issued under Sec 6 (1) and after 6 years of passing of the award by the special land acquisition officer was considered 'belated' and 'non justified'.⁴
- (ii) Exercise undertaken for taking possession of the acquired land by the concerned authorities⁵ such as
 - (a) Carrying out necessary development like construction of roads, laying electricity, water sewer lines;

- (b) Carrying out plots;
- (c) Constructing flats for economic weaker sections and lower income groups;
- (d) Inviting application for allotment of plots and flats for general and reserved categories;
- (e) Allotment to eligible person; or..
- (f) Incurring huge expenditure and creating third party rights; have been held as 'taking over possession of the land';

Further demarcation of the land by embedding stone and stating that construction will take place soon as constituting taking over the 'possession of acquired land'.⁶

- iii. Challenging to an acquisition of large block of land piece-meal by the owners of the plots in succession was held not proper,⁷ as it would hold up proceedings for more than a generation, when several lakhs of rupees for construction of road and material for development purpose has been spent the facts of which the owner were aware of;
- iv. Discretion conferred on the court, may in appropriate case may be exercised to decline the grant of relief, even when the court holds that the order was void;⁸
- v. Delay of 17 months in filing the writ was held good to deny the relief;⁹
- vi. Inordinate delay in filing the writ, when all steps were taken in the

1. Land Acquisition Act, 1894 is referred to as 'Act' whereas it appears in this study.

2. *Banda's* case refers to *Banda Development Authority's* case.

3. *Supra*.

4. *Satendra Prasad Jain v. State of U.P.* (AIR 1993 SC P.2517); *Awadh Bihari Yadav v. State of Bihar* (AIR 1996 SC P.122); *Pratap v. State of Rajasthan* (AIR 1996 SC 1296); *Allahabad Development v. Nasiruzzaman* (1996) 6 SCC P. 427 = 1996 (4) ALT 20 (D.N.), and *Govt. of Andhra Pradesh v. Kolkata Obi Reddy* (AIR 2006 SC 642).

5. *Bendras Case*, *Supra*.

6. *Supra*.

7. *Ajodhay Bhagat v. State of Bihar*, AIR 1974 SC P.1886.

8. *State of Rajasthan v. D.R. Laxmi*, (1996) AIR SCW 3170 in this case reliance, was placed on Wades'vied empressed in 'Administrative law' (7th Edition) P. 342-343.

9. *Gvidharan Prasad Mission v. State of Bihar* AIR 1979 (NOC) 191.

acquisition proceedings have become final, courts should be loath to quash the proceedings;¹⁰

- vii. Acquisition of land for a residential scheme framed by the urban improvement trust, writ challenging the proceeding filed after 2 years was held liable for dismissal;¹¹
- viii. Delay of 5 years in filing the writ petition was held unreasonable and liable for dismissal;¹²
- ix. 7 years of the publication of declaration and 5 years of the award passed by the collector, a writ petition challenging the proceeding was held liable for dismissal;¹³
- x. When the acquisition was found to be vitiated by fraud or malafide¹⁴ and the delay caused by the withdrawal of suit and filing the writ;¹⁵ were held entitled to relief.

3. The apex court¹⁶ then dealt with the question of what constitutes 'taking over of the possession of the acquired land' and the mode of taking possession. The norms were laid down thus:-

- 10. *Municipal Corporation of Greater Bombay v. Industries Development Investment Co. Pvt. Ltd.*, AIR 1997 SC 482.
- 11. *Urban Improvement Trust, Udaipur v. Bheru Lal*, AIR 2002 SC 3309 = 2002 (6) ALT 12.2 (DN SC).
- 12. *Ganapati Bai v. State of U.P.*: (2006) 7 SCC 508. The earlier Judgment in *State of Bihar v. Dhirendra Kumar* was followed (AIR 1995 SC 1955).
- 13. *Sararan Lata v. State of Haryana*: AIR 2010 SC 1664.
- 14. *Vyalikaval House Building Co-op. Society v. Chandrappa*, 2007 ALT (Rev.) 73 (SC) = 2007 (6) ALT 9.3 (DN SC) = 2007 (4) SCJ 35 = AIR 2007, SC.P. 1151.
- 15. *Balu Ram v. State of Haryana*: AIR 2010 SCW 257.
- 16. *Bendra's case*, *Supra*.

- i. Delivery of 'symbolical' possession is delivery of actual possession of the right, title and interest;¹⁷
- ii. When there is no building or structure on the land, 'going upon the land' amounts to effective and complete delivery or to do some act which would indicate that the authority has taken possession of the land such as by 'beating of drums' or 'hanging a written declaration on the spot';¹⁸
- iii. No hard and fast rule can be laid down as to what constitutes taking of possession and each case depends on the nature of land;
- iv. Though it is difficult to take physical possession under compulsory acquisition of lands, the normal mode of taking possession is drafting of panchanama in the presence of panchas and taking possession and giving it to the beneficiaries;
- v. When there is no crop or structure on the land, symbolic possession could be taken;¹⁹
- vi. 80% of the total compensation paid to owner²⁰, and possession of a large tract of land taken by a properly executed panchanama;²¹
- vii. When the acquired land is vacant, the act of the authority to go to the spot and preparing an panchanama will ordinarily sufficient to constitute 'taking of possession'²²;

- 17. *Balwant Narayan Bhagde v. M.D. Bhagwat*, AIR 1975 SC 1767.
- 18. *Supra* (Bendra's case).
- 19. *P.K. Kalbrugul v. State of Karnataka* (2005) 12 SCC 489.
- 20. *NTPC v. Mahesh Dutta*: 2009 (8) SCJ 804 = 2009 AIR SCW 5277.
- 21. *Sita Ram Bhandan v. Govt. of NTC Delhi*: AIR 2010 SC.
- 22. *Nahar Singh v. State of U.P.*: (1996) 1 SCC 434.

- viii. If the crop is standing or building or structure exists on land, mere going on the spot is not sufficient. Authorities have to give notice to the occupier of the building / structure or to the person who has cultivated the land and then take possession in the presence of independent witnesses and get their signatures on the panchanama;
- ix. In terms of Sec 17 (3) of the Act, when a substantial portion of the acquired land has been utilized in furtherance of the particular purpose, then the court may presume, the possession of the acquired land has been taken;
- x. Upon taking possession, the owner of the land loses the title to the land and it gets vested in the authority; and
- xi. When the making of the award is not done, then the Government shall not get the land vested in it, as Sec 17-A of the Act requires that the award should be made within two years from the date of declaration, except in the case of emergency, when the Government can take possession prior to making of the award.
4. In conclusion, it may be suggested that an amendment may be made to the land acquisition Act to incorporate all the above norms laid down, wherever it is not so provided.

Journal Section Ends